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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, June 24, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

Ex Parte, in re: Amendment and CASE NO. SEC980021  
adoption of rules pursuant to  
§ 13.1-523 of the Code of Virginia  
(Securities Act)

ORDER AMENDING AND ADOPTING RULES

On or about May 4, 1998, the Division of Securities and Retail Franchising ("Division") mailed to broker-dealers and investment advisors registered or pending registration under the Securities Act (§ 13.1-501 et seq. of the Code of Virginia), issuer agents registered or pending registration under the Securities Act and other interested parties summary notice of proposed amendments to the existing Securities Act Rules ("Rules") and forms, and of the opportunity to file comments and request to be heard with respect to any objections to the proposals.<sup>1</sup> Similar summary notice was published in several

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<sup>1</sup> Included in this mailing was a letter from the Division expressing the Commission's concern about the impact that the "Year 2000" computer phenomenon might have on securities and investment advisor firms as well as their customers, and urging firms to take timely measures to adequately address this issue.

newspapers in general circulation throughout the Commonwealth. This notice also was published in "The Virginia Register of Regulations," Vol. 14, Issue 17, May 11, 1998, pp. 2397-8. The notice stated that the purposes of the proposed changes are to implement the 1998 amendments to the Securities Act, conform the Rules to certain regulations promulgated by the U.S. Securities and Exchange Commission, and make technical and other minor changes to various Rules and forms. A total of four comment letters were filed. No one requested to be heard, and, consequently, no hearing was held.

One of the four comment letters was submitted by the Institute of Certified Financial Planners. Two of the other letters were filed by member firms of the Institute, and they contain comments substantively identical to those stated in the Institute's letter.

These three commentators expressed support for the proposed changes to Rules 21 VAC 5-10-40, 21 VAC 5-80-10 and 21 VAC 5-80-170. In addition, they suggested that the Virginia practice of requiring the owners of sole proprietor investment advisor firms to separately register as investment advisors and investment advisor representatives be modified. Their recommended change is to have the individuals' registrations as investment advisors include, or serve as a waiver for, registration as investment advisor representatives.

The Division opposes such a modification at this time because it is beyond the scope of this proceeding. Moreover, the Securities Act may have to be amended to effect this change.

The remaining comment letter focuses on the proposed amendment to Rule 21 VAC 5-80-10, which creates an exclusion, applicable only to sole proprietor investment advisors employing just one investment advisor representative, from the requirement to maintain written supervisory procedures. This person requested that the exclusion be broadened to embrace all investment advisors that employ just one investment advisor representative, regardless of their form of entity, and also recommended repeal of the separate registrations required of sole proprietor investment advisors, described above.

The Division supports expanding the exclusion from the written supervisory procedures requirement to include all entities that have only one investment advisor representative, and recommends that Rule 21 VAC 5-80-10 B 4, as well as Rule 21 VAC 5-80-170 D (a companion to Rule 21 VAC 5-80-10 B 4), be modified accordingly. For the reasons stated earlier, the Division objects to repealing the separate registration requirement.

The Commission, upon consideration of the proposed Rules amendments, the comment letters, and the responses and recommendations of the Division, is of the opinion and finds

that the proposed amendments to Rules 21 VAC 5-80-10 B 4 and 21 VAC 5-80-170 D should be modified as noted above and adopted, and that the other proposals should be adopted as noticed.

Accordingly, IT IS ORDERED THAT:

(1) The comment letters and evidence of mailing and publication of notice of the proposed amendments to the Rules be filed in and made a part of the record of this case.

(2) The proposed Rules amendments previously noticed be, and they hereby are, modified as described above and adopted, effective July 1, 1998. A copy of the amended Rules as hereby adopted is attached to and made a part of this order.

(3) This matter is dismissed from the Commission's docket and the papers herein be placed in the file for ended causes.

such other persons as the Division deems appropriate.